TOPICS:

air permit

dismissal

timeliness

mootness

renewal applications

administrative extensions

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Permittee: Daniel P. McInerny, Esq., Bose McKinney & Evans LLP

IDEM: April Schultheis, Esq.

ORDER ISSUED:

May 25, 2004

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

STATE OF INDIANA)		HE INDIANA OFFICE OF MENTAL ADJUDICATION
COUNTY OF MARION)	ZI (IROI (I	
IN THE MATTER OF:)	
)	
OBJECTION TO THE ISSUANC	CE OF)	
PERMIT APPROVAL)	
NO. T005-7301-00048)	CAUSE NO. 99-A-J-2273
RIGHTWAY FASTENERS		j	

FINAL ORDER GRANTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT'S MOTION TO DISMISS

This matter having come before the Court on the Indiana Department of Environmental Management's (IDEM) Motion to Dismiss; and the Environmental Law Judge ("ELJ"), having read and considered the petitions, motions, record of proceeding, evidence, and briefs and responses of the parties, now finds that the Motion should be **GRANTED**; the ELJ now makes the following findings of fact and conclusions of law, and enters the following Order with respect to the Petition of Rightway Fasteners.

Findings of Fact

- 1. Rightway Fasteners filed its Petition for Review of Permit Approval No. T005-7301-00048 (the "Permit") on April 9, 1999.
- 2. The parties agree that this Permit expired on March 18, 2004.
- 3. The Petitioner states that the application to renew this Permit was submitted on March 17, 2004. The IDEM states that the application to renew this Permit was submitted on March 18, 2004. The renewal application was not submitted in a timely manner. The Permit cannot be administratively extended pursuant to 326 IAC 2-7-4(a)(1)(D).
- 4. The IDEM filed its Motion to Dismiss on April 19, 2004. The IDEM argues that this action is most because the permit has expired and the Petitioner did not timely file an application for renewal of the permit.
- 5. The Petitioner raises certain equitable issues in its response. Petitioner alleges that it filed an application for a modification of the permit on September 25, 2003; that although the IDEM cashed the check for the application fee, the IDEM states that it did not receive the application; that the IDEM has not acted upon this application; and that the Petitioner

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¹ Whether the application was submitted on March 17th or 18th is irrelevant as the renewal application should have been submitted no later than June 18, 2003 in order to be timely for purposes of an administrative extension of the permit.

intended this modification to eliminate its need for the Part 70 permit. These facts and/or issues are not relevant to this Motion to Dismiss.²

Conclusions of Law

- 1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.
- 2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
- 3. "When a dispositive issue in a case has been resolved in such as way as to render it unnecessary to decide the question involved, the case will be dismissed." <u>Travelers Indem. Co. v. P.R. Mallory & Co.</u>, 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. A.D. v. State, 736 N.E.2d 1274, 1276 (Ind. App. 2000).
- 4. 326 IAC 2-7-4(1)(D), in pertinent part, states: "For purposes of a Party 70 permit renewal, a timely application is one that is submitted at least nine (9) months prior to the date of expiration of the sources' existing permit."
- 5. This Permit has expired and the Petitioner, by his own admission, did not file an application for renewal in time to receive an administrative extension of this Permit under 326 IAC 2-7-4(a)(1)(D). This Court does not have the authority to grant an administrative extension of this Permit or to modify the permit at issue in this matter.
- 6. As there is no effective relief that can be rendered to the parties by this Court, this matter is deemed moot.

Final Order

IT IS THEREFORE ORDERED that IDEM's Motion to Dismiss is **GRANTED** and the Petition for Administrative Review filed by Petitioner, Rightway Fasteners, is hereby **DISMISSED**.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative

² The Petitioner has requested that this Court note these facts. While this Court finds that the equitable issues raised by these facts are not relevant for purposes of determining whether the case is moot, the Court notes that it could certainly consider these facts, if presented as verifiable evidence, should an enforcement action against this permittee for violations based on the facts presented here come before this Court.

review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED THIS 25th day of May, 2004.

Catherine Gibbs Environmental Law Judge